

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NORTH DAKOTA**

BERG DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS

NOTICE IS HEREBY GIVEN that Connie Berg, Kyle Berg, Connie Berg Revocable Living Trust, and Kyle R. Berg Revocable Living Trust (collectively, the “Berg Defendants”), by and through their undersigned counsel of record, file this Motion to Dismiss the complaint (as amended at Docket No. 11, the “Complaint”)

BERG DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS

filed by Erik A. Ahlgren in his official capacity as Chapter 7 trustee of the Debtor's bankruptcy estate (the "Trustee").

NOTICE IS FURTHER GIVEN that if objections to the relief requested in this Motion are timely filed, the Court will schedule a hearing on this Motion and objections in accordance with the provisions in Local Rule 7007-1 of the North Dakota Rules of Bankruptcy Procedure.

NOTICE IS ALSO GIVEN that if no objections to this Motion are filed within twenty-one (21) days from the date of service of this Notice, the Court will enter an Order granting the relief requested in this Motion. Written objections to this Motion, if any, shall be filed with the Clerk of the United States Bankruptcy Court, whose address is 655 First Avenue North, Suite 210, Fargo, ND 58102, with a copy mailed to counsel for the Berg Defendants, whose name and address is listed below.

Pursuant to Federal Rule of Bankruptcy Procedure 7012(b) and Federal Rules of Civil Procedure 9(b) and 12(b)(6), the Berg Defendants move to dismiss the claims asserted against them in the Complaint for (i) failure to plead fraud with particularity and (ii) failure to state a claim upon which relief can be granted. The bases for the relief requested in this Motion are set forth in the *Berg Defendants' Memorandum in Support of Motion to Dismiss* filed contemporaneously with this Motion.

Given that the Trustee has failed to plead fraud with particularity and failed to state a claim against the Berg Defendants upon which relief can be granted, the

Berg Defendants respectfully request that the Court issue an Order dismissing the claims against the Berg Defendants in the Complaint.

STATEMENT OF NONCONSENT TO FINAL ORDERS

As required by Federal Rule of Bankruptcy Procedure 7012(b), the Berg Defendants hereby state that they do not consent to entry of final orders or judgment by the Bankruptcy Court in the above-captioned Adversary Proceeding.

Dated: November 22, 2024

/s/ Stephen M. Pezanosky
Stephen M. Pezanosky (*admitted pro hac vice*)
Stephen.Pezanosky@haynesboone.com
Aimee M. Furness (*admitted pro hac vice*)
Aimee.Furness@haynesboone.com
Jordan E. Chavez (*admitted pro hac vice*)
Jordan.Chavez@haynesboone.com
Brenna H. Scully (*admitted pro hac vice*)
Brenna.Scully@haynesboone.com
HAYNES AND BOONE LLP
2801 N. Harwood St., Suite 2300
Dallas, Texas 75201
Telephone: (214) 651-5000
Facsimile: (214) 651-5940

*Attorneys for Defendants Connie Berg,
Kyle Berg, Connie Berg Revocable
Living Trust, Kyle R. Berg Revocable
Living Trust*

CERTIFICATE OF SERVICE

The undersigned certifies that on the 22 day of November 2024, the above document was served on all counsel of record via CM/ECF, including the Trustee and his counsel.

/s/ Aimee M. Furness
Aimee M. Furness